JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
9 July 1997

Case T-4/96

S
v
Court of Justice of the European Communities

(Officials – Occupational disease – Medical Committee – Basis for calculating the benefits provided for by Article 73(2) of the Staff Regulations)

Full text in all languages in ECR-II

Application for: first, the annulment of the decision of the Court of Justice of 11 April 1995, in so far as it adopted an invalidity rate of 6% for the purpose of calculating the lump sum provided for in Article 73 of the Staff Regulations of Officials of the European Communities; secondly, acknowledgement of the applicant's right to that lump sum calculated on the basis of an invalidity rate of 30%; and, thirdly, compensatory interest.

Decision: Application dismissed.

Abstract of the Judgment

The applicant entered the service of the Court of Justice on (...). [1]

Shortly after taking up her duties she fell ill, and was obliged to stop working. On (...), the Invalidity Committee referred to in Article 13 of Annex VIII to the Staff Regulations of Officials of the European Communities ('the Staff Regulations') recognized that she was suffering from total permanent invalidity preventing her from performing the duties appropriate to a post in her career bracket. On (...), the appointing authority ('the authority') decided to retire her of its own motion and to grant her an invalidity pension under Article 78 of the Staff Regulations.

Following a favourable report drawn up by the Invalidity Committee on (...), the applicant resumed her duties at the Court of Justice on (...). However, on (...), she fell ill again and gave up work altogether.

Thereafter, two procedures were initiated, in parallel and independently of each other, within the Court of Justice. The first procedure is not at issue in the present case.

1 A number of dates have been suppressed to protect the anonymity of the applicant.

The second procedure was set in motion on the applicant's initiative on the basis of Article 73 of the Staff Regulations. By letter of 18 December 1989, she applied to have her illness recognized as being of occupational origin.

Following that application, the doctor designated by the Court of Justice concluded in a medical report that the applicant's illness did not constitute an 'occupational disease [...] or [...] the occupational aggravation of a pre-existing disease'. On the basis of that report, and applying the first paragraph of Article 21 of the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease ('the rules'), the authority notified the applicant on 20 February 1991 of a draft decision rejecting her application to have her illness recognized as being of occupational origin.

By letter of 17 April 1991, the applicant requested that the matter be referred to a Medical Committee in accordance with the second paragraph of Article 21 of the rules. That Medical Committee made two reports.

In its first report, of 3 March 1993, it concluded that 'the anxio-depressive state of Mrs S [had] developed in connection with her work, but that her pathological personality [accounted] for 50% of the origin of her medical pathology, 30% [being] due to the events of life and 20% [being] due to her work'. The Medical Committee stated that 'the performance of her duties [was] neither the essential nor the preponderant cause of Mrs S's illness'.

Taking the view that it was not in a position to take its decision on the basis of that report, the authority put five further questions to the Medical Committee in a letter

of 20 June 1994. In a second report of 12 January 1995, the Medical Committee replied thereto as follows:

'1. the rate of permanent invalidity still being suffered by Mrs S is 30%;

2. Mrs S was *not* suffering from a pre-existing illness when she took up her duties with the European Communities;

3. the direct relationship between the performance of Mrs S's duties with the Communities and the illness is assessed at 20%. That is to say that, on a scale of 100, the exercise of the duties was 20% to blame, the pathological personality 50%, and the events of life 30%.

4. and 5. in the light of the answer to the third question, there is no need to reply.'

On the basis of that second report, the authority adopted the following decision on 11 April 1995:

'1. In accordance with the provisions of Article 3(2) of the [rules], it is recognized that Mrs S has a permanent partial invalidity of 30%, originating as to 20% in connection with the performance of her duties with the Court of Justice of the European Communities.

2. Mrs S is to receive a lump sum of BFR 1 094 745, calculated on the basis of 6% (30% x 20%) and taking into account the total of the basic salary payments for the twelve months preceding the medical certificate of (...) certifying an illness due to working conditions, namely: monthly basic salary, BFR 190 060 x 12 months x 8 x 6%.'

It is that decision which is challenged in this case.

The claims for annulment

The first plea, alleging illegality of the Medical Committee's reports

The purpose of Articles 19 and 23 of the rules is to confer upon medical experts the task of definitively appraising all medical questions arising from the operation of the insurance scheme established by those rules (paragraph 40)

See: 156/80 *Morbelli* v *Commission* [1981] ECR 1357, paras 18 and 20; 265/83 *Suss* v *Commission* [1984] ECR 4029, para. 11; C-185/90 P *Commission* v *Gill* [1991] ECR I-4779, para. 24

The Medical Committee is entrusted with a broad task, consisting in supplying the appointing authority with all the medical assessments necessary for adopting its decision concerning the recognition of the occupational origin of the official's disease and the determination of the degree of his permanent invalidity.

For the sake of efficiency, however, it is desirable for the appointing authority to indicate by a clear and precise set of instructions, when referring a matter to the Medical Committee, the points on which it wishes to obtain definitive medical assessments. Moreover, when it receives a report from the Medical Committee, the appointing authority may, by issuing further instructions, define its questions more closely or raise new ones in order to obtain all the assessments desired. In those cases, the Medical Committee is under a duty to reply clearly and precisely to the appointing authority's questions. Those instructions cannot have the effect of preventing the Medical Committee from communicating to the appointing authority further medical findings capable of elucidating its decision (paragraph 42).

See: T-64/94 *Benecos* v *Commission* [1995] ECR-SC II-769, paras 46 and 58

The second plea, alleging infringement of the duty to state reasons

Whether the plea is well founded

Medical appraisals properly so-called, which have been made by the Medical Committee, must be regarded as definitive provided the conditions in which they were made were not irregular, the Court's power of review being confined to questions concerning the constitution and proper functioning of such committees and the formal propriety of the opinions they deliver. The Court of First Instance therefore has jurisdiction to examine whether the opinion contains a statement of reasons enabling the reader to assess the considerations on which its conclusions were based and whether it establishes a comprehensible link between the medical findings which it contains and the conclusions which the Medical Committee draws (paragraph 54).

See: *Morbelli* v *Commission*, cited above, paras 18 and 20; 257/81 *K* v *Council* [1983] ECR 1, para. 17; *Suss* v *Commission*, cited above, paras 9 to 15; 277/84 *Jänsch* v *Commission* [1987] ECR 4923, para. 15; 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143, para. 8; *Commission* v *Gill*, cited above, para. 24; T-154/89 *Vidrányi* v *Commission* [1990] ECR II-445, para. 48; T-122/89 *F* v *Commission* [1990] ECR II-517, para. 16; T-165/89 *Plug* v *Commission* [1992] ECR II-367, para. 75; T-88/91 *F* v *Commission* [1993] ECR II-13, para. 39; T-556/93 *Saby* v *Commission* [1995] ECR-SC II-375, para. 35

The third plea, alleging infringement of Article 73 of the Staff Regulations, Articles 3(2) and 12(2) of the rules, and the invalidity scale

If an official's illness was caused solely, essentially, preponderantly or predominantly by the performance of his duties, it constitutes an occupational disease within the meaning of Article 3(2) of the rules (paragraph 79).

See: 189/82 *Seiler* v *Council* [1984] ECR 229, para. 19; *Benecos* v *Commission*, cited above, para. 46

That provision would be deprived of its effectiveness if recognition of the occupational origin of an official's illness were to be limited to that hypothesis alone. Other, more complex, situations exist, where an official's illness has several causes, occupational and non-occupational, physical or psychological, which have each contributed to its appearance. In that event, it is for the Medical Committee to determine whether the performance of duties with the Communities – whatever assessment might be made of that factor's significance in relation to the non-occupational factors – bears a direct relation to the official's illness, as, for example, where it is a factor triggering that illness (paragraph 80).

See: *K* v *Council*, cited above, para. 20; 76/84 *Rienzi* v *Commission* [1987] ECR 315, para. 10; *Plug* v *Commission*, cited above, para. 81

If Article 73(2) of the Staff Regulations, Article 12 of the rules and the invalidity scale are not to be deprived of their effectiveness, they must allow the varying range of medical conditions covered by Article 3(2) to be reflected in the indemnity paid to officials (paragraph 85).

That approach is confirmed by the wording of Article 3 of the rules and by Article 3(1) in particular. That provision shows that the concept of 'occupational disease' is based on the existence of a link between the pathological state of the official and the performance of his duties with the Communities. Furthermore, it is only 'to the extent to which' that link exists that the illness may be regarded as an occupational disease (paragraph 86).

It follows that where the Medical Committee finds that a number of causes, not all of them occupational, have each contributed directly to the appearance of an official's illness, the appointing authority is under a duty to take that medical finding into account in calculating the amount of the lump sum provided for by Article 73(2) of the Staff Regulations (paragraph 87).

Moreover, it is quite possible that, on the basis of the various examinations it has carried out or its experience in the area concerned, the Medical Committee may consider that it is able to evaluate or quantify, in one form or another, how significant a role performance of the duties played in the appearance of the official's illness. Where the Medical Committee's conclusions give such a clear and precise evaluation, the appointing authority is entitled to reflect it in its calculation of the lump sum referred to above (paragraph 88).

The fourth plea, alleging infringement of the principle of equality

The rule of harmony between complaint and action requires that, for a plea before the Community judicature to be admissible, it must have already been raised in the pre-litigation procedure, thus enabling the appointing authority to know in sufficient detail the criticisms made of the contested decision. Whilst claims for relief before the Community judicature may contain only 'heads of claim' that are based on the same matters as those raised in the complaint, those heads of claim may nevertheless

be further developed before the Community judicature by the presentation of pleas in law and arguments which, whilst not necessarily appearing in the complaint, are closely linked to it (paragraph 98).

See: 133/88 *Del Amo Martinez* v *Parliament* [1989] ECR 689, paras 9 and 10; T-57/89 *Alexandrakis* v *Commission* [1990] ECR II-143, paras 8 and 9; T-496/93 *Allo* v *Commission* [1995] ECR-SC II-405, para. 26

It should be added that, since the pre-litigation procedure is an informal procedure and those involved at that stage are generally acting without the assistance of a lawyer, the administration must not interpret the complaints restrictively but should, on the contrary, consider them with an open mind (paragraph 99).

See: *Del Amo Martinez* v *Parliament*, cited above, para. 11

The claim that the defendant should be ordered to pay the sum of BFR 1 973 541

Under Article 44 of the Rules of Procedure of the Court of First Instance, the parties are required to identify the subject-matter of the proceedings in the initiating document. Even though Article 48(2) of the Rules of Procedure allows new pleas in law to be introduced in the course of the proceedings in certain circumstances, that provision cannot be interpreted as authorizing an applicant to bring new claims for relief before the Community judicature and thus alter the subject-matter of the dispute (paragraph 104)

See: 232/78 *Commission* v *France* [1979] ECR 2729, para. 3; 125/78 *Gema* v *Commission* [1979] ECR 3173, para. 26; T-28/90 *Asia Motor France* v *Commission* [1992] ECR II-2285, para. 43; T-398/94 *Kahn Scheepvaart* v *Commission* [1996] ECR II-477, para. 20

Furthermore, the claim for compensation is not closely linked to the claims for annulment. Since this is a Community staff case, its admissibility is conditional upon due completion of the prior administrative procedure provided for by Articles 90 and 91 of the Staff Regulations. It is essential that that procedure begin with a request by the applicant to the appointing authority to make good the damage suffered, followed, if appropriate, by a complaint against the decision rejecting the request (paragraph 106).

See: T-5/90 *Marcato* v *Commission* [1991] ECR II-731, paras 49 and 50; T-1/91 *Della Pietra* v *Commission* [1992] ECR II-2145, para. 34; T-50/92 *Fiorani* v *Parliament* [1993] ECR II-555, paras 45 and 46; T-361/94 *Weir* v *Commission* [1996] ECR-SC II-381, para. 48; T-10/95 *Chehab* v *Commission* [1996] ECR-SC II-419, para. 67

Operative part:

The application is dismissed.